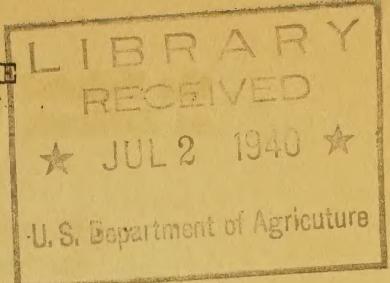


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UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION
NORTH CENTRAL DIVISION
Washington, D.C.



Mis. 40-53

June 1, 1940.

MEMORANDUM FOR ALL STATE CHAIRMEN

Re: Regulations governing the examination of records of the Department of Agriculture or the giving of testimony with reference to the contents thereof.

Inquiry has been made of this Division as to the right of committeemen to exhibit county association records in court and to give testimony with reference to the contents thereof. Section 22, Title 5, of the United States Code (R. S. Sec. 161) authorizes the head of each executive department of the Government to prescribe regulations for the government of his department. This section of the code reads as follows:

"Departmental regulations. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it."

Section 8 (b) of the Soil Conservation and Domestic Allotment Act, as amended, authorizes the Secretary of Agriculture, among other things, to issue regulations by providing, in pertinent part, as follows:

" * * * The Secretary shall make such regulations as are necessary relating to the selection and exercise of the functions of the respective committees, and to the administration, through such committees, of such programs."

Section 1533 of the Regulations of the Department of Agriculture relates to examining and/or obtaining copies of or testimony concerning official records. This section of the regulations was amended by an order of the Secretary of Agriculture dated December 20, 1939. The added portion of this section, which relates particularly to the records of the Agricultural Adjustment Administration,

the Federal Crop Insurance Corporation, and the Sugar Division, reads as follows:

"The remainder of this Regulation is issued pursuant to authority vested in the Secretary, and especially pursuant to the provisions of Section 161 of the Revised Statutes of the United States (United States Code, Title 5, Section 22) and the several statutes authorizing the activities of the Agricultural Adjustment Administration, the Federal Crop Insurance Corporation, and the Sugar Division of the Department, and includes and supersedes General Office Order No. 52, issued by the Administrator, Agricultural Adjustment Administration, April 15, 1935, and General Office Order No. 52, Amended, issued December 26, 1935, with respect to the records (except drafts not finally acted upon and except records of the kind designated by the head of the agency as records which in the public interest shall, for the period fixed by him, be used or examined only by the Department) of or in the custody of the Agricultural Adjustment Administration, and is intended also to define more particularly the general policy of the Department with respect to all records, wherever located, of the Agricultural Adjustment Administration, the Federal Crop Insurance Corporation, and the Sugar Division.

"Such records of the above-named agencies and of the county agricultural conservation associations, the previous county production control associations, and the State, county, community, and other local committees heretofore or hereafter utilized in administering the programs under the supervision of such agencies are the property of the Government of the United States entrusted to the custody of the respective agencies of the Department of Agriculture and, therefore, no court or administrative body in the absence of authority granted by or under Federal statute has authority to compel the production of such records or giving of testimony respecting the same. Inasmuch as the inspection or examination of, the furnishing of information concerning, or the production of such records, or the giving of testimony concerning the same, in court or elsewhere, causes additional expense and loss of time to the Government and its agencies having charge of them, unless otherwise provided in or pursuant to Federal statute such records will not be open to inspection or examination, information or testimony as to their contents will not be furnished and they will not be produced in court or administrative proceedings, except in the following cases and then only on condition that no order

purporting to be a subpoena or other compulsory process be issued or allowed to stand:

"(a) to or for producers who were or are, or were or are entitled to be, signatories to or parties beneficiary under acreage or production adjustment contracts or applications therefor pursuant to the Agricultural Adjustment Act (1933) or crop insurance contracts, work sheets, applications for any payment or other benefit under any statute, or applications for any exemption or benefit under the Bankhead Cotton Control Act, the Kerr-Smith Tobacco Control Act, the Potato Act of 1935, the Agricultural Adjustment Act of 1938, or any other statute heretofore or hereafter enacted authorizing agricultural programs, provided that in case of production of such records, or testimony concerning them, in court or administrative proceedings the prior approval of the head of the agency having responsibility for such records is first obtained:

"(b) to or for persons authorized in the articles of association of county agricultural conservation associations to have access to the records referred to in such articles and subject to the limitations therein;

"(c) to or for a department, bureau (of this or any other department), independent establishment, or other agency, or duly authorized representative thereof, of the executive branch of the Federal Government or any member of Congress, Delegate, or Resident Commissioner, upon request to and with the prior approval of the head of the agency having responsibility for such records;

"(d) to or for State Governments or agencies thereof, upon request to and with the prior approval of the head of the agency having responsibility for such records;

"(e) to or for any other person who establishes the facts (i) that any right of his may be adversely affected unless he obtains proof of facts shown in such records or that he has a pecuniary interest in the subject-matter of such records or in any property to which they relate, (ii) that the administration of justice requires proof of the facts shown in such records, and (iii) that such proof cannot be obtained elsewhere or otherwise, upon request to and with the prior approval of the head of the agency having responsibility for such records.

"Mailing lists or addresses of producers shall not be supplied, or allowed to be compiled, under any circumstances except for the use of the county agricultural conservation committee and the State agricultural conservation committee and except for the use of any agency of the Department of Agriculture upon request to and with the prior approval of the head of the agency having responsibility for such records. (See Regulation 1536).

"The approval provided for in items (a), (c), (d), and (e), above and in the sentence immediately preceding this sentence may be given generally or in particular cases by the administrator of the Agricultural Adjustment Administration, the manager of the Federal Crop Insurance Corporation, and the chief of the Sugar Division, or officers designated by them, in matters within their respective jurisdictions.

"The giving of any testimony, the production, inspection, or examination of any records, or the divulging of the contents thereof by or to any person or agency in pursuance of this Regulation shall not be permitted to impede or delay the routine work of the office concerned. Whenever any such record is produced in any court or administrative proceeding it shall remain in the possession of an officer or employee of the agency in whose custody it is and shall not be physically incorporated in the record of such proceeding, and upon the conclusion of his appearance in such proceeding it shall be returned to the place from which it was taken.

"The provisions of this Regulation are applicable to all records which may now or hereafter belong to or be in the custody of any of the above-mentioned agencies of the Department or any of the above-mentioned associations or committees, or their successors. Nothing contained in this Regulation shall be construed to prevent full access to such records being given to any duly authorized representative of the Department of Justice, the General Accounting Office, the Bureau of Internal Revenue, or the Secret Service of the United States, promptly upon presentation of his credentials."

You are informed that these regulations have been pronounced valid by the Solicitor of the Department of Agriculture, and that the United States Department of Justice has successfully relied upon them in the few cases the Agricultural Adjustment Administration has had to bring to its attention. It is also of interest to know that regulations made under Section 161 of the Revised Statutes denying access on the part of private persons to records of Government Departments and denying the production thereof in court have been sustained by the Supreme Court of the United States.

If any attempt is made to compel the production, without the permission which may be given by the Division, of any agricultural conservation association record or testimony concerning it, in any court or before any administrative body, the text of the regulations as shown herein should be brought to the attention of the officer bearing the summons or subpoena and if he insists thereafter on serving such summons or subpoena the regulations should be brought to the attention of the court or administrative body and request made that it postpone action in the matter of the production of the record or testimony until the United States Attorney is afforded an opportunity to appear and defend the interests of the Federal Government. The circumstances should be brought promptly to the attention of the North Central Division, and will, if necessary, be forwarded to the Solicitor of the Department for handling. If the court or administrative body proposes to act within a time too short to follow the usual course, as shown in NCR-404, the county office or the State office, as the case may be, should bring the matter directly to the attention of the United States Attorney's office, if necessary by telegraph or telephone. A copy of this memorandum should be made available to the United States Attorney in such emergency cases. However, in all but an emergency situation, the North Central Division should be advised and action taken only on advice received from Washington.

Care should be taken to inform the court and the persons who desire the production of records or testimony concerning their contents that it is the policy of the Department to cooperate and be of assistance in the doing of justice in the courts.

It is important that the following information be contained in any letter or telegram informing this Division of any proceedings instituted in court in which an officer of a county agricultural conservation association, a committeeman, or an employee is requested to produce any records or give testimony with respect to the contents of any records of a county association:

- (1) The names of the parties litigant;
- (2) The title and location of the court in which the proceedings are instituted;
- (3) The purpose of the proceedings;
- (4) The interest of the person requesting the records or testimony concerning their contents;
- (5) The date upon which the summons or subpoena was served upon the county committeeman, officer, or employee.
- (6) The time stated in such summons or subpoena for appearing in court or producing records in court.

You are requested immediately to forward to each county association in your State a copy of this memorandum.

Very truly yours,

Harry N. Schooler
Harry N. Schooler,
Director,
North Central Division.